

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

June 19, 2013

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Bernie Bossio, Tom Shamberger, Jim Shaffer and George Papandreas

MEMBERS ABSENT: none

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

- A. Minutes for the May 2, 2013 hearing. POSTPONED
- B. Minutes for the May 15, 2013 hearing. POSTPONED
- C. Bylaw revisions – Fletcher stated the Board’s “Bylaws and Annexes 1 and 2” were amended and read the resolution to the Board. Shaffer made a motion to pass Resolution “Amend Bylaws and Annexes 1 and 2” as read; seconded by Shamberger. Motion carried unanimously.

III. NEW BUSINESS

- A. **CU13-06 / Blue Sky Realty / 401 Spruce Street:** Request by Lisa Mardis of Project Management Services, on behalf of Blue Sky Realty, LLC, for conditional use approval of a “Lodging or Rooming House” use at 401 Spruce Street; Tax Map 26, Parcel 91; B-4, General Business District.

Fletcher read the Staff Report stating the petitioner seeks to convert the use of the building at 401 Spruce Street from “Mixed-use Dwelling” and “Professional Services Establishment” uses to a “Lodging or Rooming House” use, which requires conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

According to the City’s Residential Rental Registry, there is currently one apartment on the second floor of the building. According to the City’s Finance Department, the first floor of the building is currently occupied by Plaid Group, LLC (d/b/a Bill’s Bail Bonds).

The petitioner seeks to provide a seven-bedroom “Lodging or Rooming House” use by eliminating the nonresidential use/occupancy on the first floor.

On July 16, 2008, the Board denied conditional use Case No. CU08-12 where the petition requested to change the “Mixed-use Dwellings” and “Professional Services Establishment” uses to a “Multi-family Dwelling” use.

Staff maintains, as it did in Case No. CU08-12, that the preservation of existing at-grade commercial leasable space in mixed-use buildings is paramount to ensuring desired mixed land use patterns within the B-4 District. In so doing, the following information is restated from the related Staff Report dated July 16, 2008.

The objective of mixed-use development and land use patterns is to contribute to the creation of places that enliven urban centers while meeting the everyday needs of the community. Mixed-use development offers many advantages over single-use development in fostering better urban environments including:

- Sense of Community – Mixed-use development provides opportunities for community interaction by catering to a diversity of people and uses in one place.
- Vitality – Diversified, mixed-use urban centers become community destinations.
- Convenient Access – The mixing of diverse uses within proximity of public spaces, services, and amenities makes it possible to reduce vehicle trips and encourage shared parking and transit ridership.
- Pedestrian-Friendly Environment – Mixed-use development provides more opportunities for convenient and safe pedestrian access.
- Longer Hours of Active Street Life – A range of uses are generally active at different times of the day or on different days of the week, which activates the space for longer hours than is possible for any one single use type.
- Safety – Mixing residential, commercial, and professional activities within a compact area ensures activity throughout the day and evening, creating a sense of safety.

Because the Planning and Zoning Code provides that “mixed-use” and “over-store” dwelling uses are permitted by-right in the B-4 District, it appears that the preferred residential use pattern is to maintain and preserve a non-residential presence at street level. However, “multi-family” dwelling conditional use status in the B-4 District affords the Board an opportunity to review requests on a case-by-case basis.

There appears to be several conditions around the subject site that should contribute to the success of a suitable non-residential use on the first floor of the subject building, including:

- Availability of on-site parking
- Access to and availability of public parking, both metered curb and metered lots, within close proximity of the subject site.
- Anchor public uses within close proximity that include churches, government offices, public library, etc.
- Low commercial vacancy rates along Fayette Street between High and Spruce Streets.
- High visibility of the subject site created by the traffic light at Spruce and Fayette Streets; activity at City Hall; Farmers’ Market [Morgantown Marketplace pavilion completed in 2012] across the street on Saturdays during summer months, etc.

- High daily traffic volumes along Spruce Street.
- A fixed public transit stop within one block of the subject site.

Since the Board's decision denying Case No. CU08-12, the July 2010 Downtown Strategic Plan Update was completed and provides the following guidance relating to planned land uses and preferred development patterns within the City's central business district (**emphasis added**).

Section 4.8 Housing (Page 51):

"The opportunities to create a variety of housing types and price levels in the downtown are vast, as downtown Morgantown has many historic buildings whose upper floors could be redevelopment for use as apartments and/or condominiums. In addition, there are a number of empty lots that could be developed with new **mixed-use buildings**."

Section 6.0 Downtown Strategies (Page 64):

"Housing and Redevelopment: Redevelop vacant and underperforming properties throughout the downtown and promote a variety of **mixed-use housing** in order to diversify the demographics of downtown residents."

Section 6.1 Downtown Framework Plan (Page 65):

"Downtown's traditional core already reflects the new paradigm for American downtowns: walkable gridded streets, public gathering places, **mixed-uses**, and mixed demographics. These qualities should be extended throughout the study area to promote a strong sense of community and **attract new residents, merchants, entrepreneurs, and investors**."

Section 6.3.1.4 Character Area C4 – Forest Avenue (Page 86):

"Opportunities – Additional **mixed-use** infill at the **north end of Spruce Street**."

Section 6.3.1.4 Character Area C4 – Forest Avenue (Page 87):

"Reinforce the urban quality by increasing the mass, density, and **mixed-use** quality buildings that front on well-designed pedestrian streets."

Section 6.6 Housing and Redevelopment (Page 122):

"6.6.2 Encourage the reuse and conversion of underutilized **upper floors for new residential uses**."

As noted above, the goals, objectives and strategies provided in the 2010 Downtown Strategic Plan Update emphasize mixed-use housing. Additionally, the preservation and growth of street level commercial retail storefronts is emphasized by focusing, in part, on the conversion of upper floors as additional residential opportunities.

Moreover, "mixed-use" and "over-store" dwelling uses are permitted by-right in the B-4 District, which supports the Plan's preferred residential use pattern of maintaining and preserving a non-residential presence at street level. However, "lodging or rooming house" uses are currently permitted in the B-4 District as a conditional use.

Article 1329.02 of the Planning and Zoning Code defines "conditional use" as:

“A use which because of special requirements or characteristics may be permitted in a particularly zoning district only after review by the Board of Zoning Appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in this Ordinance.”

Requiring a particular land use to obtain conditional use approval affords the Board of Zoning Appeals and the community through a public hearing the opportunity to review the merits of the conditional use request on a case-by-case basis.

Consideration is given to the characteristics peculiar to the proposed conditional use and its location with reference to its surroundings (e.g., built environment, neighboring uses, streets, existing improvements, demand upon public facilities, etc.). The approval of a conditional use along with specific conditions, if warranted, are intended to ensure that the particular conditional use at the particular site on which such use is proposed to be located is compatible with other existing or permitted uses surrounding the site.

As reflected in the Board’s denial of CU08-12 and reaffirmed in the 2010 Downtown Strategic Plan Update, the preservation of existing at-grade commercial leasable space in existing mixed-use buildings is paramount to ensuring desired mixed land use patterns within the urban commercial center.

Bossio recognized the petitioner’s representative, Lisa Mardis, of Project Management Services, who stated the “Lodging and Rooming House” request is similar to the previous request made by Douglas Leech in February 2013 for 206 Spruce Street. Mardis referred to the staff report for Case No. CU13-03 and noted the map included three structures, including 401, 419, and 427 Spruce Street, that were marked as solely occupied by residential uses. 419 Spruce Street includes 10 beds and 427 Spruce Street includes 7 beds, which are both owned by Blue Sky Realty. 401 Spruce Street currently has 4 bedrooms in the upstairs and anticipates having 3 bedrooms at grade upon approval. The Staff report relates the request to a 2008 request for multi-family use, but does not compare it to a similar request at 206 Spruce Street for “Boarding and Lodging Use.” Mardis stated that in order to promote a fair and equitable standard in the downtown Spruce Street corridor, this same standard should be applied to Blue Sky Realty. The same arguments that are being used against the proposed use were not used against the 206 Spruce Street proposal, such as on-site parking, access to public parking, low commercial vacancies on Spruce Street, high daily traffic volumes along Spruce Street and the Downtown Strategic Plan which existed at the time of the approval. Since the 2008 denial for the multi-family unit use at this address, market trends have changed to warrant the greater housing variety and to reduce distances between housing workplaces, retail businesses and other amenities and destinations and the utilization of alternate modes of transportation including walking, biking and public transit. As part of the Staff Report, Mardis noticed that Findings of Fact 7 and 8 were changed supporting a negative decision. The Findings and Fact for Blue Sky provided in the application clearly reflect what was previously approved in the Leech case. Therefore, the property owner requests the same standards be applied to this property as the market trends have not changed since February. Mardis referred to the Spruce Street Sub Shop at this location that was rebuilt after being hit by a car, and noted the structure was built to reflect more of a residential nature instead of a commercial nature.

Bossio asked if the adjacent property was all residential. Mardis confirmed and explained all three of the buildings are owned by Blue Sky Realty. Bossio asked if there were requirements made by the City involved with the rebuilding of Spruce Street Sub Shop, and if so did it include having to look more commercial or retail. Mardis did not recall the structure having to go to a

design review committee when being rebuilt. Bossio asked if a Design Review Committee existed at that time and if so why wasn't the structure reviewed. Mardis confirmed the committee did exist but could not elaborate without looking at the file.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Staff recommends revisions to the petitioner's findings of fact as provided in Addendum B of this report (deleted matter struck through; new matter underlined) and that the Board deny CU13-06 based on the negative determinations provided for Findings of Fact No. 7 and No. 8.

Papandreas expressed concerns with changes to downtown spaces on the first floor in Morgantown. Although he realizes the building is on a side street, and it does have a residential appearance, he feels the downtown potential business district is being eroded. The Board takes great strides in trying to ensure the liability of neighborhoods and downtown is a neighborhood that should be afforded the same consideration.

Shamberger expressed this case is different than Case No. CU13-03 in that the structure is at grade level, the front porch area has already been converted to a business frontage, and there are multiple units already within the structure which includes a business.

Papandreas noted the downstairs portion of the building has a past record of being commercial over the years.

Bossio stated the difference between Case No. CU13-03 and the current request, is the fact that 206 Spruce Street is a house which includes steps to the entrance way. Bossio agreed with Papandreas and expressed concerns with the decline of floor level commercial spaces. Bossio inquired as to why these uses rely on the Board of Zoning Appeals to define and noted that an ordinance is in process to omit "Lodging and Rooming House" uses in the B-4 District. Fletcher confirmed and stated the first reading of the ordinance with City Council had passed. Bossio inquired as to why the Spruce Street Sub Shop was allowed to be rebuilt as residential and did not go through a design review process.

Shaffer noted that internal management is involved with Case No. CU13-03 and a full time house manager would be present on a 24 hour basis. The current conditional use request would not have internal management available when comparing to the prior case.

Bossio stated he felt the Board should look at the actual structure and property rather than how the house would be managed when making a decision.

Shamberger referred to the prior Case No. CU13-03 when expressing that area is not a grade. The structure had problems with ADA and would have problems if opening for a retail establishment. Shamberger noted the current request is for a structure at grade level that has been known to have a commercial appearance.

It was decided by the Board to read and vote on each of the findings and facts individually with Bossio reading each of the finding of fact statements and Fletcher reading each response.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The additional resident(s) granted by the proposed conditional use request will not significantly impact the average daily and AM and PM peak times related to origination trips from and destination trips to the subject site. The proposed use is located within an existing structure with approximately six (6) parking spaces on site.

Shamberger made a motion to find in the affirmative for Finding of Fact No. 1 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The petitioner will comply with all recommendations and requirements of the City Fire Marshal and Building Code Inspectors to ensure the building is safe for all residents and neighbors.

Shamberger made a motion to find in the affirmative for Finding of Fact No. 2 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The granting of the conditional use will not result in an addition to the existing footprint or height of the building and should therefore not affect existing light distribution and air flow patterns within the immediate area.

Papandreas made a motion to find in the affirmative for Finding of Fact No. 3 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The petitioner seeks to change the use classification of the existing structure and should therefore not affect the existing density or intensity of the site.

Shamberger made a motion to find in the affirmative for Finding of Fact No. 4 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The petitioner will comply with all requirements as provided by Building Code Enforcement and the City Fire Marshal. There will not be any addition to the existing footprint or height of the building and should therefore not affect congestion of population.

Papandreas made a motion to find in the affirmative for Finding of Fact No. 5 as revised by Staff; seconded by Shamberger. Motion carried unanimously.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The vicinity is served by public transportation. The proposed change in use classification does not appear to require public infrastructure, public utilities, or public services beyond that which is currently available.

Papandreas made a motion to find in the affirmative for Finding of Fact No. 6 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

Finding of Fact No. 7 – Value of buildings will **NOT** be conserved, in that:

Erosion of street-level commercial and professional space at this location is detrimental to surrounding property values.

Papandreas made a motion to find in the negative for Finding of Fact No. 7 as Papandreas stated; seconded by Shamberger. Motion passed 4-1 with Bossio voting nay.

Finding of Fact No. 8 – The most appropriate use of land is **NOT** encouraged, in that:

The preservation of existing at-grade level non-residential commercial leasable space in existing mixed-use buildings is paramount to ensuring mixed-use development patterns desired within the B-4 District as provided in the 2010 Downtown Strategic Plan Update and the City's Planning and Zoning Code.

Papandreas made a motion to find in the negative for Finding of Fact No. 8 as recommended by Staff; seconded by Shamberger. Motion passed 4-1 with Bossio voting nay.

Papandreas moved to deny conditional use petition CU13-06 based on the negative findings fact for No. 7 and No. 8; seconded by Shamberger. The motion passed 4-1 with Bossio voting nay.

Bossio reminded Ms. Mardis that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

B. V13-11 / Nada Clue, LLC / 1350 Saratoga Avenue: Request by James Yost, on behalf of Nada Clue, LLC (d/b/a/ "Saratoga Hot Spot, II), for variance relief from Article 1369.10(K) as it relates to off-premise signs; Tax Map 8, Parcel 12; B-2, Service Business District.

Papandreas offered to recuse himself as he has done business with the petitioner in the past as a property-owner and tenant and does not want to compromise the work of the BZA.

Fletcher did not feel Papandreas was required to recuse himself. Cardoso agreed and didn't feel there was a conflict. Bossio asked the petitioner if he had any objections to Papandreas reviewing the case, and the petitioner stated he had no objections.

Fletcher read the Staff Report stating In response to a complaint and a follow-up inspection, Staff sent a certified letter to the owner and the tenant of the subject property and the individuals listed on the West Virginia Secretary of State's website as organizers/members of NADACLUE, LLC concerning an illegally erected off-premise sign advertising "Saratoga Hot Spot." The subject establishment is located at 268 Wildwood Street, Star City. Addendum A of this report illustrates the location of the off-premise sign as well as the location of the "Saratoga Hot Spot" establishment.

Article 1369.10(K) provides that off-premise signs are not permitted within the City of Morgantown. Because the petitioner is seeking variance relief to allow the off-premise sign, prosecution of the violation has been deferred pending the Board's decision.

The petitioner argues that the subject off-premise sign is justified based on the following summarized reasons:

- The location of "Saratoga Hot Spot" and its proximity to and visibility from Monongahela Boulevard is such that off-premise signage is necessary for patron wayfinding.
- There is one other non-conforming off-premise sign advertising the hotel located in Star City and another non-conforming changeable copy sign on the subject site.
- The illegal off-premise sign was in place purportedly for a year before the City initiated enforcement action.
- The Board approved an off-premise sandwich board for *Classic Cutz* located at 219 Wall Street on 15-Aug-2012 under Case No. V12-25.

Staff submits the following correlating facts and observations:

- Staff recognizes that the businesses along Saratoga Avenue in Star City may be challenged by their location in relation to limited vehicular exposure along Monongahela Boulevard. However, this challenge is arguably a symptom of historical development patterns along Saratoga Avenue outside and beyond the land use and development jurisdiction of the City of Morgantown.

Facilitating the proliferation of sign clutter at one of Morgantown's busiest gateways will detract from the built environment of both the Morgantown and Star City communities.

An alternate wayfinding solution in this instance may be advanced by the neighboring businesses in Star City. Specifically, affected business could approach Star City municipal leadership to discuss the merits and opportunities of working with Morgantown to pursue and permit an attractive and contributing multi-tenant ground sign. This approach may better serve a broader purpose, benefit a larger constituency, and create a sense of place and value.

- Staff has no working knowledge of the history or circumstances of the neighboring hotel development in Star City and the related non-conforming off-premise sign in Morgantown. What is relevant and presently applicable is the fact that the City enacted a strict legislative stance concerning off-premise signage in the 2006 Zoning Ordinance amendment. The petitioner's argument that "two wrongs make a right" is a fallacy of relevance. Further, the Board has upheld the Code's prohibition of off-premise signage;

notably in its 25-July-2012 partial denial of Case No. V12-22 relating to the off-premise ground sign requested for the *Goodwill* store in Sabraton.

- The Planning Division, with the assistance of the Morgantown Public Works Department, has participated in the abatement of illegal “Saratoga Hot Spot” off-premise signs placed in the public right-of-way and within the general vicinity of the subject site. On several occasions since the enactment of the off-premise sign prohibition in 2006, the Public Works Department removed illegal “Saratoga Hot Spot” off-premise signs. The present off-premise sign was not removed by the City because it does not appear to be located within the public right-of-way.

A use or structure, in this case a sign, developed in violation of the City’s Planning and Zoning Code remains a violation and cannot achieve a status or enjoy the protections of a grandfathered use or structure regardless of the period during which the violation was left un-prosecuted.

- The petitioner’s argument that the subject “Saratoga Hot Spot” sign is similar to the Board’s approval of the *Classic Cutz* sandwich board sign is a fallacy of association. A sandwich board sign is, by definition, not a permanently attached structure. Further, no comparative context is shared between the two noted off-premise signs.

The granting of the subject variance undermines the fundamental purposes of the City’s sign regulations and the legislative intent to prohibit off-premise signs.

Poorly designed and unattractive visual clutter, particularly within community gateways and along arterial corridors, neglects and diminishes the pleasing, cleaner, more orderly look and quality of the City, its built environment, and desirable streetscapes.

Haphazard, poorly located, confusing, and overstated off-premise signage makes navigation and wayfinding more difficult thereby deteriorating traffic safety. Too many signs can distract drivers from the primary task of driving safely. Excessive visual information generally increases driver response times. Additionally, the over provision of signs can reduce the likelihood of drivers taking notice of them.

Urban design strategies that create a positive sense of place and value are founded on creating, preserving, and protecting a pleasing repetition of design elements with some novelty and variations on a theme. Careless, disorganized, and prohibited off-premise signage and resultant visual chaos do not foster an authentic positive experience for new or frequent motoring passersby. Negatively viewed vistas and streetscapes adversely affect the quality, character, and attractiveness of nearby public and private property, neighborhoods, and businesses.

Bossio recognized the petitioner, James Yost of 241 Wildwood Street in Star City, who stated he is requesting permission for the sign to stay in place as a way to direct customers from Monongalia Boulevard to the business. Yost specified he was not aware of a law against off-premise signage when installing the sign years ago and thought the sign was a part of Star City. He explained the owner of the property allowed the sign to be erected and noted Star City needs the extra funds from his B & O Tax to balance the budget and bring business into the area. Yost asked the Board to maintain the sign in its current location.

Papandreas asked Yost if he rented the space where the sign is currently located. Yost stated he does not rent the space but has permission from the owner.

Shaffer asked if Yost was willing to bring the sign into compliance. Yost stated that if the sign required certain measurements or designs, he would certainly comply with code.

Bossio noted the sign is located off-premise and there are no provisions to bring the sign into compliance.

Papandreas asked how far the sign was located from Star City. Fletcher explained that the Morgantown Express Lube is the last piece of property located in Morgantown, and everything across the street and behind the structure is within the town of Star City.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of the request.

Bossio introduced Albert Claudio of 3129 North Greystone Drive, who stated he is the owner of the property and was notified of the off-premise sign through a certified letter from the City. Claudio removed the sign as the letter required. Yost notified Claudio of the situation and explained that without the sign there is a considerable drop in business. Claudio stated he supports the variance request and asked for suggestions of how to get the sign into compliance. He explained how the hotel business has diminished over the years and therefore the area is a secondary location with traffic depending on the signage to attract customers.

Bossio reminded Claudio that Fletcher suggested the Town of Star City work with Morgantown to develop one sign that would be more attractive and asked if he was willing to discuss alternatives with Fletcher. Claudio agreed to discuss alternatives and noted that his son, who is a future City Councilman, was present.

There being no further comments in favor of the request, Bossio opened the public hearing asking if anyone was present to speak in opposition of the request.

Bossio introduced Bill Kawecki of 324 Cobun Avenue, who expressed sympathy for the business and understands their circumstances and position. However, Kawecki stated that exceptions usually come back to haunt the City at a later date and wants to see the Board progress in a manner that makes the City more attractive.

Cardoso asked the petitioner if there were other off-premise signs located in the Star City area. Yost explained that one previously existed but was taken down by the Department of Highways.

Bossio gave the opportunity for the petitioner to provide a rebuttal. Yost approached the podium and expressed that he doesn't feel the sign is infringing on anyone and is located on private property with permission from the owner.

Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that Staff normally does not offer a recommendation for sign variance petitions. However Staff recommends, in this instance, that Case No. V13-11 be denied based on the findings and conclusions stated in Addendum B of this report.

It was decided by the Board to read and vote on each of the findings and facts individually with Bossio reading each of the finding of fact statements and Fletcher reading each of the responses.

Papandreas noted that conditional uses are on a case by case basis and are all different. An approval on one case does not mean a similar case should be approved. Papandreas did not feel the sign is infringing on the area and the businesses in that area. Therefore, he believes the case does have exceptional circumstances.

Bossio understood and agreed, but noted that sign regulations don't exist for off-premise signage. Bossio felt the City and Town of Star City should make arrangements for combined signage.

Papandreas expressed that granting the request for the off-premise sign in this area would have less of an impact than having a combined sign between the two Cities, as there is minimal visual clutter in the area.

Shamberger asked if exceptional circumstances would remain if the sign was located in a different area of Morgantown with more density. He believes if applied to the same standard, then there would be no exceptional circumstances.

Cardoso agreed there were no exceptional circumstances, as other businesses existed on Saratoga Avenue. Cardoso noted the area is an entranceway to the City of Morgantown and doesn't feel clutter should exist off the road in that location. Cardoso felt it would be beneficial to work with the Town of Star City to develop a combined sign.

Cardoso made a motion to find in the negative for Finding of Fact No. 1 and accept the proposed negative response by Staff; seconded by Shaffer. Motion passed 4-1 with Papandreas voting nay.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – There are NOT exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The petitioner's circumstances of being in close proximity to and easily accessible from the arterial corridor of Monongahela Boulevard yet not visible to motoring passersby is not exceptional or extraordinary as other businesses along or near Saratoga Avenue in Star City experience the same or nearly identical conditions as the petitioner including Blaine Turner Advertising, Casey's ATA Academy, The Hair Garage, etc.

Bossio read the statement for Finding of Fact No. 2 and Fletcher read the petitioner's response.

Shaffer made a motion to find in the negative for Finding of Fact No. 2 and accept the proposed amended negative response by Staff; seconded by Shamberger. Motion passed 4-1 with Papandreas voting nay.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 2 – The variance is NOT necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The existence of one non-conforming off-premise sign for the neighboring hotel that has been in existence for a number of years does not constitute a substantial property right within the subject Morgantown corporate vicinity nor is off-premise signage possessed by many properties within the subject Morgantown corporate vicinity.

Bossio read the statement for Finding of Fact No. 3 and Fletcher read the petitioner's response.

Papandreas asked whether the Morgantown Express Lube sign and the Hotel Morgantown sign are located in Star City or Morgantown. Fletcher stated that the entire site is located inside the City limits.

Shaffer made a motion to find in the negative for Finding of Fact No. 3 and accept the proposed negative response by Staff; seconded by Cardoso. Motion passed 4-1 with Papandreas voting nay.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 3 – The granting of this variance WILL be harmful to the public welfare and WILL harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Unattractive visual clutter resulting from the petitioner's off-premise sign located within the Morgantown / Star City gateway undermines the legislative purpose of Article 1369 by neglecting and diminishing the pleasing, orderly look, and quality of the City, its built environment, and the streetscape of the Monongahela Boulevard arterial corridor. Careless, disorganized, and prohibited off-premise signage and resultant visual chaos do not foster an authentic positive experience for new or frequent motoring passersby. Negatively viewed vistas and streetscapes adversely affect the quality, character, and attractiveness of nearby public and private property, neighborhoods, and businesses.

Bossio read the statement for Finding of Fact No. 3 and Fletcher read the petitioner's response.

Shaffer made a motion to find in the negative for Finding of Fact No. 4 and accept the proposed negative response by Staff; seconded by Shamberger. Motion passed 4-1 with Papandreas voting nay.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 4 – The granting of this variance WILL alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Facilitating the proliferation of off-premise sign clutter by granting the variance at the subject site will detract from the quality and character of the vicinity and its land uses both inside and outside of Morgantown; will impede recognition of the Morgantown Express Lube establishment and diminish its locational market value, which is within the City of Morgantown; and, may adversely impact traffic safety by promoting the distraction of drivers from haphazard, nonconforming, off-premise signage.

Shaffer moved to deny variance request petition V13-11 based on the negative findings of facts; seconded by Cardoso. The motion passed 4-1 with Papandreas voting nay.

Bossio reminded Mr. Yost that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- C. CU13-10 / Matthew H. Smailes / 260 Green Street:** Request by Matthew H. Smailes for conditional use approval of a "Convenient Store, Neighborhood" use at 260 Green Street; Tax Map 29, Parcel 543; R-1A, Single-Family Residential.

Fletcher read the Staff Report stating the petitioner seeks to establish a "Neighborhood Convenience Store" at 260 Green Street. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 provides the following definition for a "Neighborhood Convenience Store":

"Any retail establishment with a floor area of less than 3,000 square feet offering for sale a limited line of groceries and household items intended for the convenience of the neighborhood. The term is to be distinguished from 'gas station mini-mart.' No fuel sales are permitted on site."

Table 1331.05.01 provides that "Neighborhood Convenience Store" uses are permitted in the R-1A District with conditional use approval by the Board.

The following narrative summarizes the petitioner's proposed development program:

- Parcel 543 of Tax Map 29 is considered nonconforming as it contains two principal structures.
- The 260 Green Street structure includes the subject storefront on the first story as well as two mixed-use dwelling units on the upper floor addressed as 425 Arch Street, which are registered with the City's Rental Registration Program.
- The 250 Green Street structure is a single-family dwelling unit, which is registered with the City's Rental Registration Program.
- There are three (3) on-site parking spaces located in front of the 250 Green Street structure.
- There is one delivery space within the public right-of-way along the Green Street sidewalk fronting the subject storefront.
- There are three on-street parking spaces on the opposite side of Green Street from the petitioner's proposed storefront that are signed for business use between 8:00 AM and 7:00 PM.
- The petitioner has signed a purchase agreement with realty's present owner Robert A. Bailey. Staff understands that the purchase agreement is contingent upon, at least, the Board's approval of subject conditional use petition.

- The subject storefront is approximately 1,088 square feet and was most recently occupied by *Spiker's Upholstry* and once occupied for a number of years by *Bailey's Grocery*.
- The contemplated name of the petitioner's proposed establishment is "Green Arch Market" with proposed store hours of 9:00 AM to 9:00 PM seven days a week.
- According to the petitioner, the store will offer candy, snacks, soft drinks, tobacco, and retail sale of packaged alcoholic drinks.
- The petitioner also described to Staff the sale of prepared sandwiches and similar food offerings using an oven, stove, and deep fryer, which will be dependent upon neighborhood interest and economic viability. The petitioner illustrates in his application exhibits five two-top or one ten-top table to support this purpose.
- Staff has advised the petitioner that the sale of alcoholic beverages for on-site consumption is not permitted.
- Two employees will be present during the establishment's busiest shift.
- The petitioner currently resides approximately three blocks from the subject storefront.

It is the opinion of the Planning Division that the proposed change in use from an "Upholstery/Interior Decorating Service" to a "Neighborhood Convenience Store" does not result in an increase in the intensity of use. Specifically, the minimum parking standard for the most recent and proposed uses are nearly identical. Therefore, consideration for the provision of on-site parking above that which is currently available is not required as provided in Article 1365.02(B).

Given the public comments Staff has received via email in support of the petitioner's conditional use and the fact that no opposing comments have been received prior to the preparation of this report, the neighborhood convenience store appears to be, at this point, a welcome return to the Greenmont Neighborhood.

It should be noted that "Liquor Store" and "Restaurant" uses of any type are not permitted in the R-1A District. Staff recommends that the Board stress to the petitioner that the proposed conditional use, if approved, is for a "Neighborhood Convenience Store" and that a limited line of groceries and household items must be offered as the establishment's foremost enterprise.

Bossio recognized the petitioner's representative, Kevin Kiszka of 913 Woodburn Street, who stated he works with the petitioner at Sargasso's restaurant. Kiszka explained the petitioner wanted to gear the business towards a market for fresh locally sourced ingredients that would be prepared in house and available for take home. In addition, the business would resemble Bailey's, a former business that was located in the building many years ago. The demographic has changed in the area, and therefore the store will focus towards college aged students as a convenient place to shop without having to travel into town.

Bossio referred to the Staff report and noted that an emphasis was placed on grocery line items and expressed concerns when Kiszka mentioned the business would be focused on serving market fresh food. Kiszka stated the business would remain a convenience store, while offering fresh produce and other groceries for take home.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher noted to the Board that three emails were received by Staff that are in support of the Convenient Store, Neighborhood, and no oppositions had been submitted.

The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval of Case No. CU13-10 as requested with the following conditions:

1. That to ensure the approved conditional "Neighborhood Convenience Store" use does not detract from the residential character of the neighborhood:
 - a. A limited line of groceries and household items intended for the convenience of the neighborhood must be offered as the establishment's foremost enterprise; and,
 - b. The subject establishment may not be open later than 9:00 PM; and,
 - c. The petitioner must provide, to the satisfaction of the City Engineer, and properly maintain an appropriate public trash receptacle, the area around which the petitioner shall be responsible for keeping free from litter.
2. That all regulated signage for the subject establishment must comply with related standards set forth in Article 1369 "Signs".
3. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without the prior approval of the Board of Zoning Appeals.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for CU13-10 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The proposed change in use from an "Upholstery/Interior Decorating Service" to a "Neighborhood Convenience Store" does not result in an increase in the intensity of use that requires consideration for the provision of on-site parking above that which is currently available as provided in Article 1365.02(B). The subject storefront has been previously occupied by commercial uses including, for several years, *Bailey's Grocery*. The existing on-site and signed on-street parking appear to have sufficiently satisfied parking demand for the previous commercial uses.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

All related Building Code and Fire Code provisions will be addressed as required by the Code Enforcement Division and the City Fire Marshal.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

No addition to the existing structure is proposed that would alter existing light distribution and air flow patterns within the general vicinity.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

No addition to the structure is proposed that would result in increasing the mass, density, or intensity of the existing structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The historical trend of mixed-uses within the subject structure will continue and therefore not increase existing residential density.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The proposed “Neighborhood Convenience Store” does not appear to require public services or public facilities that are not already available to and serving the site and general vicinity.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

Occupying the vacant storefront with the proposed “Neighborhood Convenience Store” should serve to reestablish the historical mixed-use activity and vitality that has been enjoyed within the immediate area and Greenmont Neighborhood.

Finding of Fact No. 8 – The most appropriate use of land is NOT encouraged, in that:

The subject storefront was occupied for several years by *Bailey’s Grocery*, which is considered under the Planning and Zoning Code to be an identical land use.

Shamberger moved to approve CU13-10 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Kiszka that the Board’s decision can be appealed to Circuit Court within thirty days and that any work related to the Board’s decision during this period would be at the sole financial risk of the petitioner.

- D. CU13-11 / William L. Smith, Jr. / 1616 Earl L. Core Road:** Request by William L. Smith, Jr., for conditional use approval of a “Farmers Market” / “Outdoor Flea Market” in the B-2 District at 1616 Earl Core Road; Tax Map 32, Parcel 36; B-2, Service Business District.

Fletcher read the Staff Report stating the petitioner seeks to establish a “Farmer’s Market” / “Outdoor Flea Market” use in the parking area of the *Smitty’s Kountry Kitchen* establishment. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 provides the following related definition:

“FARMER’S MARKET – The offering for sale of fresh agricultural products directly to the consumer at an open-air market designated as a community activity.”

“FLEA MARKET – An occasional or periodic market held in an open area or structure where goods are offered for sale to the general public by individual sellers from open or semi-open facilities or temporary structures. Flea markets shall not be construed to be Farmers Markets.”

“OUTDOOR FLEA MARKET – The principal use of land as an open-air market for secondhand articles and/or antiques.”

According to Table 1331.05.01 “Permitted Land Uses”, “Farmer’s Market” and “Outdoor Flea Market” uses require conditional use approval in the B-2 Service Business District.

Table 1365.04.01 provides the following minimum parking requirements:

Farmer’s Market – 1 space per vendor plus 1 space per 200 sq. ft. of GFA

Outdoor Flea Market – 1 space per vendor plus 10 spaces per acre

No parking standard is provided for a “Flea Market” use.

The area outlined in red in the illustration below is approximately 4,240 square feet or 0.10 acres. [See Staff Report for illustration]

There are eleven (11) market parking spaces on the site. The petitioner indicates that there are four (4) spaces in addition to the marked spaces.

Based on the minimum parking standards, the “Farmer’s Market” use requires 21 parking spaces while the “Outdoor Flea Market” use requires 1 parking space for the subject area alone without including the number of vendors.

It appears that the significant difference between the two minimum parking standards assumes that a vendor at an “Outdoor Flea Market” will cover substantially more space than a vendor at a “Farmer’s Market” given the different types of products offered for exchange. Specifically, most “Farmer’s Market” vendors display produce and related items from the back of a pickup truck and/or small box trailer while most “Outdoor Flea Market” vendors display merchandise in such a way to allow customers to view, move around, and inspect goods in a more spacious manner.

Staff recommends that the Board address the Planning and Zoning Code’s minimum parking standard dilemma in context of the subject site’s layout and existing marked parking spaces by restricting the number of vendors to a reasonable number.

Bossio recognized the petitioner, William Smith, who stated the location of the business is situated at one of the busiest intersections in Morgantown. The goal was to make the parking lot available to vendors when the business is closed. Smith explained that an average of 900 cars pass in front of the store an hour, which makes it visible to market their business and the parking lot has adequate space to house the vendors. The market would occur on Sunday’s, when the usual traffic count is lower, which will decrease traffic in the parking lot area during the market hours.

Shamberger asked if the business was currently open 7 days a week. Smith confirmed and explained the store opens at 10 AM daily, but opens at 1:00 PM on Sunday’s. The farmers market would take place prior to the store opening on Sunday.

Papandreas asked if the store would be open when the market occurred, as most people would purchase ice cream or lunch while shopping. Smith stated there are no plans at this time to combine with the market, however if decided upon in the future, he would only offer limited menu items. Papandreas referred to the conditions in the Staff report, stating the store could

not be operating while the market was taking place. Smith understood and reiterated that the store does not open until 1:00 PM on Monday.

Bossio expressed confusion and asked if the store will be open while the market is occurring. Smith stated he would not open the store if he is not allowed to do so. Fletcher noted the Staff condition was placed due to the limited amount of parking available at that location.

Bossio asked Smith if he understood that his store could not be operating while the farmers market was in effect. Smith understood and asked the Board if he is required to provide a public restroom to the patrons of the farmers market. Bossio did not believe that a restroom is required as no food is being served for consumption at the market.

Fletcher referred to the Staff Report and stated the concept of serving foods during the farmers market was not an option mentioned prior to Staff setting the conditions. Fletcher discussed the difference between a farmers market and an outdoor flea market and explained the conditions were written based on the ordinance for a farmers market.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

The Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval of CU13-11 with the following conditions:

1. That the hours of operation for the "Farmers' Market" / "Outdoor Flea Market" use approved herein may not coincide or overlap with the hours of operation for the *Smitty's Kountry Kitchen* establishment.
2. That no more than eight (8) vendors may be present at any given time during the hours of operation for the "Farmers' Market" / "Flea Market" conditional use approved herein.
3. That the conditional use granted herein is specific to the petitioner and may not be transferred without prior approval from the Board of Zoning Appeals.

Papandreas asked Smith if eight vendors are adequate to suit his business plan. Smith stated that eight vendors will work well based on the lay-out of the location and the parking availability.

Fletcher explained the number of vendors is based on the parking calculation and a challenge to this site is the lack of a controlled driveway entrance with one long curb cut that surrounds the property.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for CU13-11 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The Board's conditions restricting the operational hours of the "Farmer's Market" / "Outdoor Flea

Market” and restricting the number of vendors is intended to mitigate congestion that may be associated with the conditional use.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

All related building and fire code provisions will be addressed as required by the Code Enforcement Division and the City Fire Marshal.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

No permanent structure is proposed or necessary for the conditional “Farmer’s Market” / “Outdoor Flea Market” use that would alter existing light distribution and air flow patterns within the general vicinity.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

Site use will be limited and there is adequate space for parking and vendors, provided the Board’s conditions are observed restricting the “Farmer’s Market” / “Outdoor Flea Market” operational hours and the number of vendors. Additionally, no permanent structure is proposed or necessary for the occasional “Farmer’s Market” / “Outdoor Flea Market” use that would result in increasing the mass, density, or intensity of the existing structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

People will generally be quick in and out and can move about easily, provided the Board’s conditions are observed restricting the “Farmer’s Market” / “Outdoor Flea Market” operational hours and the number of vendors. Additionally, a residential use is not proposed as a part of the conditional “Farmer’s Market” / “Outdoor Flea Market” use.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The nature of the conditional “Farmer’s Market” / “Outdoor Flea Market” use does not appear to require public services and/or facilities that are not already available to and serving the site and general vicinity.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

No permanent structure is proposed or necessary for the conditional “Farmer’s Market” / “Outdoor Flea Market” use that would alter market values or commercial activity of adjacent buildings and uses. Additionally, the Board’s conditions restricting the operational hours of the “Farmer’s Market” / “Outdoor Flea Market” and restricting the number of vendors is intended to conserve existing normal, access, utilization, and enjoyment of adjoining properties.

Finding of Fact No. 8 – The most appropriate use of land is NOT encouraged, in that:

The Board’s condition restricting the operational hours of the “Farmer’s Market” / “Outdoor Flea Market” is intended to safeguard the principal use of the subject site from overlay or encroachment from the occasional use. The subject site is located within a heavily traveled and vibrant commercial corridor with adjoining residential neighborhoods, all of which should serve to benefit from the occasional “Farmer’s Market” / “Outdoor Flea Market” use.

Papandreas moved to approve CU13-11 as requested with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Mr. Smith that the Board’s decision can be appealed to Circuit Court within thirty days and that any work related to the Board’s decision during this period would be at the sole financial risk of the petitioner.

- E. **V13-22 / Smitty's Kountry Kreme / 1616 Earl L. Core Road:** Request by William L. Smith Jr., for variance relief from Article 1347.04 as it relates to setbacks at 1616 Earl Core Road; Tax Map 32, Parcel 36; B-2, Service Business District.

Fletcher read the Staff Report stating the petitioner seeks to construct a carport-type accessory structure approximately two feet from the side of property line shared with the adjoining discount tobacco retail establishment. Addendum A of this report illustrates the location of the subject site.

Article 1347.04(B) provides that detached accessory structures in the B-2 District may not be located closer than ten (10) feet to the side or rear property line. As such, the proposed location of the petition's accessory structure requires an eight-foot side setback variance.

Smitty's Kountry Kreme serves a variety of ice-cream and related fare to walk-up patrons with no indoor seating area. The petitioner's stated purpose of the accessory structure is to cover and shade outdoor picnic tables for patrons. The proposed location will not reduce parking and is situated to the rear façade and parking spaces of the adjoining discount tobacco retail establishment.

Bossio recognized the petitioner, William Smith, who explained the request is for an 18 X 21 free standing carport to cover picnic tables and better facilitate comfort for the customers.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends that a two-foot variance be granted without conditions.

Shaffer made a motion to find in the affirmative for all the Findings of Facts for V13-22 as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Given the location and layout of the subject principal structure, the neighboring principal structure, parking, walk-up windows, and the nonconforming continuous driveway entrance along Earl Core Road and the connecting roadway between Earl Core Road and Sabraton Avenue, it appears that the proposed location is the most suitable on the site to develop an accessory structure for the intended purpose of covering and shading the existing outdoor seating area.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The adjoining principal structure currently occupied by the discount tobacco retail establishment

appears to encroach into the side setback standard.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed location of the accessory structure promotes and protects patron and public welfare; the positioning of which appears to be the most logical and safe location on the site given existing parking, walk-up windows, and the nonconforming continuous driveway entrance along Earl Core Road and the connecting roadway between Earl Core road and Sabraton Avenue.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

No alterations to the existing principal building, use, or site are required; the proposed accessory building can be moved at a later time; and, the nature of the variance relief cannot contribute to nor mitigate existing traffic congestion.

Cardoso moved to approve V13-22 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Mr. Smith that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- F. V13-16 / Joe Mama's / 345 High Street:** Request by Rudey Hoffert of City Neon, Inc., on behalf of Joe Mama's, for variance relief from Article 1369.07(G) as it relates to suspended signs at 345 High Street; Tax Map 26A, Parcel 105; B-4, General Business District.

Fletcher read the Staff Report stating the petitioner seeks to erect a 12.5 square foot double sided neon suspended sign for the *Joe Mama's* establishment located at 345 High Street. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(G)(1) provides that the maximum suspended sign area may not exceed 6 square feet. As such, variance relief of 6.5 square feet must be approved by the Board of Zoning Appeals.

Bossio recognized the petitioner's representative, Chris Adkins of City Neon, 428 Industrial Avenue, who stated a prior sign exists from the prior establishment, Adkins explained the new business owners have requested a new sign with a name change and logo which measures at 12.5' X 5'.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff

recommended revisions to the petitioner's findings of fact. Staff recommends that the following conditions be included should the Board grant variance relief:

1. That any and all nonconforming signs relating to the *petitioner's* establishment at the subject site must be removed prior to the erection of the subject suspended sign for which variance relief is granted herein.
2. That no additional signage, including wall signage, may be erected at the subject site relating to the petitioner's establishment.

Cardoso asked if an illustration of the sign and location on the structure was available. Adkins was introduced back to the podium and explained the new sign would exist where the old one was situated and did not have an illustration to provide. Papandreas clarified the location of the sign while referring to a picture within the Staff report.

Adkins confirmed the existing banner will be taken down with the installation of the new sign.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-16 as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The building is three (3) stories tall and all three stories are occupied by the same business eliminating the need for any additional tenant signage on the subject building, which is a unique land use characteristic in the downtown. The proposed suspended sign appears to be in fitting scale to the size of the building and neighboring suspended signage. The previous "De Lazy Lizard" establishment located at the subject site enjoyed a suspended sign that was 12'H X 1'W for an area of 12 square foot. The Board's condition restricting any additional signage at the subject site relating to the petitioner's establishment serves to reduce excessive signage on the subject building.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The "WCLG" suspended sign on the adjoining building is approximately 15'H X 3'W for an approximate area of 45 square feet, which is approximately 32.5 square feet larger than the proposed "Joe Mama's" suspended sign. For contextual purposes, the neighboring City's banner signs are approximately 8'H X 2.5'W for an area of 20 square feet. There appears to be a number of non-conforming wall and suspended signs along High Street that exceed maximum area standards. Additionally, the Board has granted relief from maximum sign area standards along High Street.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed suspended sign appears to be consistent with the adjoining "WCLG" suspended sign and the nearby City banner signs, which do not appear to appear to be a detriment.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the variance relief requested cannot contribute to nor mitigate existing traffic congestion

and will not alter the existing land use characteristics of the commercial building or downtown commercial district.

Papandreas moved to approve V13-16 as requested with Staff recommended conditions; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Mr. Adkins that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- G. V13-17 / Chill Berry / 361 High Street:** Request by Rajagopal Sundaram for variance relief from Article 1369.07(I) as it relates to wall signs at 361 High Street; Tax Map 26A, Parcel 98; B-4, General Business District.

Papandreas recused himself from Case No. V13-17 due to his owning the subject property and left Council Chambers.

Fletcher read the Staff Report stating the petitioner seeks to erect a 13 square foot wall sign for *Chillberry* located at 361 High Street. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(I)(1) provides that the maximum wall sign area in the B-4 District is determined by multiplying the storefront width in feet by 0.4. The storefront width of *Chillberry* is approximately 10 feet and the maximum area for the subject wall sign is calculated to be four (4) square feet. As such, the proposed sign requires a nine (9) square foot variance.

Article 1369.08(C) provides that permitted signs shall be restricted to the name and logo of the business establishment. Therefore, a variance is necessary to include the copy "Pati-Yo" and "Premium Frozen Yogurt".

Bossio recognized the petitioner, Rajagopal Sundaram of 206 South High Street, who stated he opened the frozen yogurt shop a year ago. The store front is very narrow and the current sign is too high up for easy visibility. The shop includes a large outdoor patio area which offers a unique venue in a natural setting. A more prominent sign would help attract customers and help to ensure success of the business.

Shaffer asked if the pictures in the Staff report were to scale and Sundaram confirmed.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Shamberger asked if the current sign will be taken down with the installation of the new one. Fletcher explained the proposed sign is in addition to the current sign.

Shaffer made a motion to find in the affirmative for all the Findings of Facts for V13-17 as revised by Staff; seconded by Cardoso. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The width of the subject storefront is approximately ten feet, which is overshadowed by the 40-foot width of the restaurant storefront on one side and the 70-foot width of the Met Theater on the other side. The maximum wall sign standard of four feet is less than the maximum area permitted for a suspended sign and would not be recognized or legible by vehicular or pedestrian passersby.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Other businesses on High Street have similar, larger wall signs on their store fronts. Some examples of those businesses are Cold Stone, Tanner's Alley, and Elegant Alley Cat.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The appropriately scaled sign should aid in promoting the sustainability of the stand-alone business in one of the narrowest storefronts along High Street; the continued success of which should contribute to the economic activity, viability, and offerings within the central business district.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the variance will not contribute to nor mitigate existing traffic congestion. The proposed area of the sign will not alter the existing land use of the subject storefront or neighboring commercial storefronts. The appropriately scaled sign should aid in promoting the sustainability of the stand-alone business in one of the narrowest storefronts along High Street.

Cardoso moved to approve V13-17 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Sundaram that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- H. **V13-18 and V13-23/ Shoney's / 9 Sterling Drive**: Request by Hassein Nikzad, on behalf of Nikz Enterprises, Inc. (d/b/a/ "Shoney's" of Morgantown), for variance relief from Article 1353.07 as it relates to performance standards at 9 Sterling Drive; Tax Map 31, part of former Parcel 107; B-5, Shopping Center District.

Fletcher read the Staff Report stating the petitioner seeks to construct a *Shoney's Restaurant* between the *Save a Lot* grocery store and the recently developed *MVB* bank branch on Earl Core Road. The subject parcel is the last development site that includes the *J.D. Byrider* and *Suburban Extended Stay* hotel developments. Addendum A of this report illustrates the location of the subject site.

V13-18 Cladding Material

Article 1353.07(C)(1) provides the following cladding material standard:

"Walls shall be clad in stone, brick, marble, approved metal paneling, and/or cast concrete."

The petitioner seeks to utilize an Exterior Insulation Finish System (EIFS) in conjunction with cultured masonry materials (stone and/or brick), which in the B-5 District requires variance relief from the Board. It should be noted that the petitioner has agreed to emulate cast concrete in the EIFS on the front and side facades, which is generally illustrated in the petitioner's building elevations.

V13-28 Landscaping

Article 1367.08(C) requires developments with parking located between the building and the street to provide a ten-foot wide landscape buffer for the length of the parking area abutting the street and a six-foot wide side and rear landscape buffer.

Given the width of the site, required parking, parking lot layout design standards, and on-site drive aisle requirements for fire department access and circulation, the petitioner seeks variance relief so that an eight-foot front landscape buffer can be developed and no side or rear landscape buffers be required.

It appears that one to two additional feet may be necessary from the front landscape buffer to ensure that the proposed parking spaces do not obstruct the desired cross-access driveway connecting the adjoining parking lot.

Article 1367.08(D) requires terminal islands with concrete curbs that are at least 130 square feet for all rows of parking spaces when a parking lot contains 20 or more parking stalls. Terminal islands are intended to protect parked vehicles, provide visibility, confine moving traffic aisles and driveways, and provide space for landscaping.

For the same reasons noted above, the petitioner seeks variance relief so that two proposed terminal islands can be developed less than 130 square feet in area as well as relief from having to develop two additional required terminal islands.

Addendum B of this report identifies the specific landscaping and terminal island elements noted above.

Bossio recognized the petitioner, Hussein Nikzad of 4673 Shadyside Lane, who stated he had nothing further to add to the Staff Report.

Bossio recognized Richard Forren, who stated he is the architect on the project and is able to answer any questions the Board may have.

Bossio asked how much space existed between the drive isle and the front of the building. Forren presented further design drawings to Bossio to explain there are 8 inches that exist between the drive isle and the building.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum C of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Each respective variance petition must be considered and acted upon by the Board separately. Staff recommends the following approvals and related conditions for each of the subject petitions:

V13-18 Cladding Material

Staff recommends that variance relief be granted for Case No. V13-18 as requested with the following conditions:

1. That the location, area, and extent of the cultured masonry materials (stone and/or brick) that is illustrated on the elevations submitted with the petitioner's variance application may not be reduced.
2. That the EIFS clad facades, to the satisfaction of the Planning Division, must emulate cast concrete on the front and side facades.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-18 and as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

According to the petitioner, the design of this facility is controlled by Shoney's Corporate Headquarters operating with narrow branding standards. The Board's condition requiring a minimum extent of cultured masonry cladding materials and that EIFS cladding be designed and finished to emulate cast concrete appropriately protects, preserves, and furthers the intent of ensuring quality and contributing cladding design.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The majority the structures within the immediate B-5 District utilize cladding materials that are not included on the permitted use including EIFS, cultured masonry materials, ornamental concrete block, etc.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The appearance of the proposed exterior material appears to fits contextually within this vicinity and

should add to the aesthetics created by adjacent properties.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

This variance has no negative impact on the land use of this vicinity or traffic flow of the public streets. The appearance of this exterior finish is widely accepted and will not affect the market values of this vicinity particularly when Shoney's has stringent guidelines regarding exterior aesthetics.

Shaffer moved to approve V13-18 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

V13-23 Landscaping

Staff recommends that a four-foot variance be granted from Article 1367.08(C)(1) rather than the two-foot variance requested by the petitioner to ensure that the desired cross-access driveway connecting the adjoining parking lot is not obstructed by the parking space depth along the subject site's Earl Core Road frontage; and, that variance relief be granted from developing six-foot landscape buffers along the side and rear of the parking lot as otherwise required under Article 1367.08(C)(2) with the following conditions:

1. That the front landscape buffer shall contain the landscape material type and spacing requirements set forth in Article 1367.08(C)(1).
2. To promote public welfare and protect property, the following minimum site design modifications must be, to the satisfaction of the Planning Division and City Engineer, incorporated to properly confine and channel the adjoining Sterling Drive traffic aisle from on-site parking spaces:
 - a. A concrete curb with a minimum height of six inches must be developed beginning at the sidewalk to be constructed at the Sterling Drive / Earl Core Road intersection, thence to and including the terminal island located at the site's Sterling Drive entrance.
 - b. The Sterling Drive traffic aisle along the subject site's side boundary must be physically separated from the adjoining parking stalls by a vertical barrier between 2 ½ feet and 3 ½ feet in height. Design preference is for a decorative guard rail type facility that compliments the architectural design of the principal building and meets best practice standards for same as determined by the City Engineer. Additionally, appropriate low level ground cover landscaping must be incorporated to the greatest extent practicable.
 - c. A concrete curb with a minimum height of six inches must be developed along Sterling Drive and the row of seven parking stalls at the rear most portion of the site. Said concrete curb must continue along the outermost sides of the subject row of parking where the terminal islands are otherwise required. The height of the curb along the outermost sides of the subject row of parking may be tapered to ensure access for emergency response and delivery vehicles provided the outermost parking stalls are properly confined so that parked vehicles do not encroach into or obstruct adjoining driveway entrances and related aisles.
 - d. The Sterling Drive traffic aisle along the subject site's rear boundary must be physically separated from the adjoining row of seven parking stalls by a vertical

barrier between 2 ½ feet and 3 ½ feet in height. Given the more limited space compared to the subject site's side boundary along Sterling Drive, a bollard and chain design may be developed provided the facility meets best practice standards for same as determined by the City Engineer.

Shaffer made a motion to find in the affirmative for all the Findings of Facts for V13-23 and as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The width and geometry of the site and necessary design provisions for the access of emergency/fire vehicles in and around this facility requires traffic routes with dimensions beyond the minimum requirements. This significantly inhibits the ability to allow for buffer zones at the side and rear of the site along with a full 10'-0" buffer zone at the site's frontage. It also prevents the installation of terminal islands above that shown without considerable reduction in the number of parking spaces which are already at the minimum required.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The variance is necessary to meet the parking and traffic flow needs of the business as well as public safety. Furthermore, other properties within the vicinity uphold the spirit and intent without meeting the exact specifications of the zoning requirements such as buffer zones and terminal islands.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Maintaining a frontage buffer and providing terminal islands at the maximum sizes available on the site meets the spirit and intent of the requirement without reducing the parking spaces below the minimum required. This upholds the landscape aesthetics created by adjacent properties. These variances are contained within the site itself and do not negatively affect surrounding property owners. The Board's condition requiring curbs and vertically facilities to physically separate and channel the Sterling Drive traffic aisle from adjoining on-site parking stalls is intended to promote the public welfare and protect property.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The landscaping will uphold the spirit and intent of the requirement within the constraints of the site and will not compromise; in fact will add to, the look and feel of the adjacent properties. This variance does not obstruct or hinder the traffic flow of the public streets.

Shaffer moved to approve V13-23 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Mr. Nikzad that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- I. **V13-19 / Goodwill of Southwestern Pennsylvania / 1954 Hunters Way:**
Request by Lisa Mardis of Project Management Services, on behalf of Goodwill of Southwestern Pennsylvania, for variance relief from Article 1369 as it relates to signage at 1954 Hunters Way; Tax Map 44A, Parcel 7.2; B-2, Service Business District.

Fletcher read the Staff Report stating the petitioner seeks to relocate and change existing site signage and install additional signage for the purposes of displaying additional corporate branding copy and to improve on-site directional messaging. The subject site has distinct operational functions that the petitioner seeks to better distinguish thereby directing visitors safely and efficiently to the site's retail store, donation center, and workforce development center. Addendum A of this report illustrates the location of the subject site.

The maximum area for wall signs on the petitioner's site is 67.2 square feet as provided in Article 1369.07(I). On 25-Jul-2012, the Board granted, under Case No. V12-22, a 79.77 square foot variance that permitted four (4) wall signs to be erected with a total area of 146.97 square feet.

Under the Board's V12-22 decision, the petitioner's request to erect an off-premise post-and-panel ground sign was denied. In response, the petitioner obtained minor subdivision approval from the Planning Commission on 14-Feb-2013 under Case No. MNS13-05 to add that portion of the private right-of-way to the Goodwill site parcel where the ground sign was proposed thereby eliminating the otherwise off-premise condition.

The following summary references the petitioner's master sign plan that is attached to subject variance application.

Post-and-Panel Sign

Although, the petitioner's master sign plan references Sign ① as a "Monument Sign", the Planning and Zoning Code considers same to be a "Post-and-Panel" sign. As noted above, the off-premise condition has been addressed. Sign ①, as proposed, complies with related Post-and-Panel sign provisions and does not require variance relief.

Wall Signs

The following table summarizes the seven (7) proposed wall signs [see Staff Report for table]. Because the petitioner has already obtained a 79.77 square foot variance under Case No. V12-22, the Board must grant an additional variance of 231.65 square feet for the proposed wall signs.

Directional Signage

Article 1369.07 (K) provides that the maximum area of any directional sign is four (4) feet and that such signs must be made of wood or masonry with painted or vinyl applied letters. The petitioner seeks to erect five (5) directional signs using an Alupalite material rather than wood or masonry. The following table summarizes the five (5) proposed directional signs [see Staff Report for table].

Summary of Requisite Variances

The following list summarizes requisite variances for the proposed master sign plan.

- 231.65 square foot variance to exceed the maximum wall sign area.
- 34 square foot variance to exceed the maximum direction sign area for four of the five proposed directional signs.

Variance relief to use an Alupalite material rather than wood or masonry for the proposed directional signs.

Bossio recognized the petitioner's representative, Lisa Mardis of Project Management Services, who stated she had further illustrations of the Goodwill site and asked to distribute to the Board members. Mardis explained the store is \$112,000 under budget, and the owners feel this is due to the location of the building.

Mardis explained Goodwill does more than just sell clothes but also serves the community by offering services to persons with disabilities as well as specialized services for employees looking for individuals to meet their needs. The site services Morgantown, Clarksburg and Preston counties and offers many types of educational training to the public, as well as free tax preparation services. Mardis stated the approved sign will not only benefit the store, but also the community. She explained the reason for the large signage in the packets is to compensate the large title, and if font is made smaller then it would be hard to read. The variance request is similar to other approvals that have been granted for J. D. Byrider and Auto Zone. Mardis referred to Mr. Whitehead of Excel Sign Company to explain the materials used for the sign.

Bossio recognized Bill Whitehead of Pittsburgh, Pennsylvania, who distributed additional illustrations to the Board members to further explain the material to be used in the proposed sign.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff does not submit a recommendation to approve, amend, or deny the petitioner's requested variance for the proposed master sign plan.

Fletcher stated that should the Board grant variance relief for Case No. V13-19, Staff recommends that the following condition be included: That the final plat approved by the Planning Commission under Case No. MNS13-05 must be recorded at the Monongalia County Courthouse prior to the issuance of building permits pertaining to signs included in the master sign plan approved herein.

Shaffer made a motion to find in the affirmative for all the Findings of Facts for V13-19 as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The Goodwill property is situated quite a distance from Earl Core Road which creates a significant disadvantage for visibility of the business in comparison to similar commercial/retail establishments within the corridor. In the concept phase of the building, it was decided to turn the building so the entrance was in closer proximity to the parking area. Visibility has also been hampered by the under-construction commercial building of R.E. Michel. It appears that the predominant commercial signage and messaging patterns within the Earl Core Road corridor exceed the maximum area standards set forth in the Planning and Zoning Code. Compliance with said maximum standards may result in a competitive disadvantage for the petitioner. The realty contains multiple access points which appear to validate the need for additional way finding mechanisms to aid customers to the access points of the store and for safe circulation in and through the uniquely shaped property. The BZA granted variance relief in July 2012 for wall signage in the amount of 79.77 square feet. Now that the store is open for business, the store managers have expressed concerns that customers are complaining that the entrance of the store is difficult to find and that access is confusing. The proposed signage, which will read 'Goodwill North Central West Virginia Workforce Development Center' will improve needed way finding for Goodwill's multiple services. Goodwill has also decided to relocate the existing signage in order to ease the confusion of patrons and attempt to draw in more customers.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be a number of non-conforming and variance-approved wall signs within the Earl Core Road commercial corridor which exceed the maximum permitted wall sign area. Additionally, the BZA has granted similar relief within the area since the sign standards were revised in the 2006 major zoning ordinance amendment. It appears that the majority of commercial signs along the Earl Core Road corridor are nonconforming as most do not meet maximum area set forth in Article 1369 of the Planning and Zoning Code. In March 2011, the Board granted a 97.08 square foot sign variance for JD Byrider, which sets back approximately 240 feet from Earl Core Road. Likewise, in October 2010, the Board granted a 149.74 square foot sign variance for Auto Zone, which sits back 77.5 feet from Earl. L. Core Road.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Proper direction/orientation of customers assisted by size and location of proposed signage appears to be an acceptable means of improving safe and efficient circulation in and around the subject site. The extent of requested variance relief reflects existing signage patterns along the Earl Core Road corridor, which do not presently appear to harm public welfare, adjoining properties, or improvements.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed sign plan should not impede neighboring buildings and should aid in safer arrival/circulation of all vehicles for the signage as proposed. The requested signage should not contribute to additional traffic congestion any more than the present businesses located along the same corridor. With the land use being similar/same to the other businesses within the commercial corridor, along with the requested signage type and design being characteristic of the Sabraton B-2 Zoning District, additional congestion or decreasing the market value of nearby neighboring properties or uses is most unlikely and not anticipated. The proposed plan appears to be consistent with the predominant commercial signage patterns of the Earl Core Road corridor, which do not

appear to diminish the market value or vitality of the well-established commercial corridor. Variances in relation to signage cannot contribute to nor mitigate existing traffic volumes on neighboring street.

Papandreas moved to approve V13-19 as requested with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Ms. Mardis that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

J. V13-20 / Morgantown Express Lube / 1350 Saratoga Avenue: Request by Albert Claudio for variance relief from Article 1347.04 as it relates to setbacks at 1350 Saratoga Avenue; Tax Map 8, Parcel 12; B-2, Service Business District.

Fletcher read the Staff Report stating the petitioner seeks to construct a 2,024 square foot addition to the existing *Morgantown Express Lube* facility to house additional service bays and storage that will extend to the side and rear property line. Addendum A illustrates the location of the subject site.

Article 1347.04(A) provides a minimum five-foot side setback requirement and a minimum 40-foot rear setback requirement in the B-2 District. As such, variance relief must be granted to allow the proposed zero-lot line addition.

The property to the affected side is currently utilized for parking by the adjoining Hotel Morgantown development located in Star City. The property to the affected rear appears to be owned by the Town of Star City according to the survey submitted by the petitioner and is currently undeveloped hillside running between the petitioner's subject property and the West Virginia Division of Highways' right-of-way for the Monongahela Boulevard.

Bossio recognized the petitioner, Albert Claudio of 3129 North Greystone Drive, who stated he took over the property in March 2012. The business is growing and they need two more bays and a storage area to accommodate the demand of customers visiting daily. The property is a triangular shape and adjoins Star City.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff does not submit a recommendation.

Cardoso asked where the zero lot line is located in proximity to the establishment. Fletcher explained the zero lot line is set closest to the hotel.

Cardoso identified that a zero lot line is not a preferred situation. Fletcher referred to the Staff Report and noted the discusses the minimum front and rear setback requirements which consume 55 feet of the property with the property depth only measuring at 82.61 feet.

Bossio expressed that zero lot lines with businesses differ from residential lot lines. He noted the zero lot line in this location is a state right-of-way and not up against someone else's property.

Cardoso made a motion to find in the affirmative for all the Findings of Facts for V13-20 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

An addition to the existing building that enables the expansion of the business and related commercial activity will require variance relief as the minimum front and rear setback requirements consume 55 feet of the 82.61-foot deep lot. The area to the rear that is owned by the Town of Star City appears to be undevelopable given its respective width between the petitioner's property and the West Virginia Division of Highways' right-of-way for the Monongahela Boulevard.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Although not located with the City of Morgantown, the adjoining *Hotel Morgantown* and neighboring *Casey's Black Belt Academy* developments do not appear to comply with the City's minimum rear, minimum side, or maximum front setback requirements.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Adjoining land uses include a hotel parking lot and a public right-of-way for a State arterial roadway.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the variance cannot contribute to nor mitigate existing traffic congestion on adjoining public streets. The existing "Automotive Repair Shop" use will not change nor will its current influence on the value or commercial activity on adjoining commercial uses located in the Town of Star City.

Cardoso moved to approve V13-20 as requested; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Claudio that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- K. **V13-21 / Mutt's Place / 263 Beechurst Avenue:** Request by George Vrooman for variance relief from Table 1365.04.01 as it relates to minimum parking requirements at 263 Beechurst Avenue; Tax Map 19, Parcel 22.1; B-2, Service Business District.

Fletcher read the Staff Report stating on 02-May-2013, the Board approved the petitioner's conditional use petition for a "Private Club" use in the B-2 District at 263 Beechurst Avenue under Case No. CU13-05. Addendum A of this report illustrates the subject site.

The following condition was included in the Board's approval:

"That the conditional use granted herein [CU13-05] is conditioned upon the Board's approval of a variance relief from the minimum parking requirements AND/OR the approval of a conditional use petition for off-premise parking. Said variance relief and/or conditional off-premise parking use must be granted before any certificate of occupancy can be issued."

Table 1365.04.01 "Minimum Off-Street Parking Requirements" does not provide a minimum parking standard for "Private Club" uses. Article 1365.04(L) provides the following guidance in these instances:

"For uses not specified in this section, or in such instance when the requirement for an adequate number of spaces is unclear or not specified in another part of this section for Conditional Uses, Shopping Center Plan, etc., the number of parking spaces shall be determined by the Planning Director on the basis of similar requirements, the number of persons served or employed, and the capability of adequately serving the visiting public."

Although a minimum parking standard for a "Restaurant, Private Club" use is provided in Table 1365.04.01, the provision of serving food is not necessarily required or expected within a "Private Club" use. Further, the minimum parking standard for a "Restaurant, Private Club" use is based, in part, on the area utilized for eating. As such, Staff applied the minimum parking standard for a "Tavern" use in calculating the petitioner's minimum on-site parking obligation.

The gross floor area of the petitioner's 263 Beechurst Avenue storefront is 1,134 square feet. The petitioner has stated to the Planning Division that there were five (5) employees present during the busiest shift at the Mutt's Place previous 2129 University Avenue location, which was very similar in gross floor area to the 263 Beechurst Avenue location.

The minimum parking requirement for a "Tavern" use is one (1) space per 100 square feet of gross floor area (GFA) plus one (1) space per employee, which results in a minimum on-site parking obligation of 16 parking stalls for the subject "Private Club."

As discussed at length during the Board's consideration of the petitioner's related conditional use petition, there is no area on the subject parcel to develop surface on-site parking. The petitioner therefore seeks relief from having to provide 16 on-site parking spaces. The petitioner purports that he has made efforts to secure off-site parking agreements to no avail.

The Board should consider the deliberations and record of its 02-May-2013 decision for Case No. CU13-05 as a part of the record for the present variance petition.

Additionally, it should be noted that Mr. Don Corwin has filed a writ of certiorari appeal of the Board's 02-May-2013 decision for Case No. CU13-05. City Attorney Stephen Fanok advised

Staff that the Board should proceed in considering and deciding the present variance petition without delay.

Bossio recognized the petitioner's representative, Lisa Mardis of Project Management Services, who stated an abundant amount of multi-family structures exist within the area and the request meets the spirit and intent of the adopted Comprehensive Plan to allow the business to be a walkable destination. Mardis recognized that Mr. Corwin opposed the conditional use petition and asked if he had submitted an opposition to the current variance relief request.

Fletcher stated that no communications in opposition had been submitted to Staff.

Shamberger referred to the Staff Report and asked for possible off-site parking locations. Mardis explained they have been unsuccessful in finding off-site parking because no one wants to tie up the parking in fear of detracting from their business. Mardis explained they found a patron to commit verbally to a one year agreement, but did not pursue because patrons would get used to parking in a certain location and it would not be a good business practice to take the convenience away after a year.

Shamberger looked at the list of possible off-site parking areas and noted the only viable parking area would be on Third Street.

Papandreas asked if parking at Beechview Place offered public parking in addition to parking for the residents. Mardis stated she understood there to be 75 public parking spaces but did not know how the spaces would be available or the cost associated with them.

Fletcher explained the Planned Unit Development for the Beechview Place does include public parking areas but does not know how it will be managed. Facilities have been installed for a gate access, and will be discussed with the Planning Department further into the development.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff does not submit recommendations concerning the petitioner's findings of fact nor does it submit a recommendation to approve or deny.

Papandreas noted the high density in the area with Beechview Place, and felt that the customer base would be mostly pedestrian foot traffic. Parking spaces do exist in the rear, even though they can't be enforced by either the petitioner or the City.

Bossio suggested a metered parking system would be beneficial in the future and allow for more spaces to exist in an organized manner.

Shamberger noted that other buildings in the area do not have enough parking spaces to fit the use.

Bossio referred to the Lavender Café and asked how the establishment determined the parking spaces. Fletcher stated parking calculations were not conducted on surrounding uses when referring to this specific case.

Shamberger felt the area should be looked at differently and possibly rezoning the area in the future due to many businesses experiencing a hardship in the B-2 district.

Bossio agreed and compared the situation to sticking a square peg in a round hole.

Papandreas noted the establishment will not be rented or leased, but rather owner-occupied which displays confidence and commitment to the building.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-21 as revised by Staff; seconded by Shaffer. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The development of successful mixed-use establishments along the Beechurst Corridor presents many issues regarding the availability of parking in a historically diverse area of Morgantown.

A Court Ruling from November 26, 1980, Pavone v. Board of Zoning Appeals, found that the Sunnyside area has traditionally provided little parking for its customers, as businesses in the area have traditionally relied upon pedestrian traffic. As the Beechurst Corridor continues to grow, it is reasonable to expect that pedestrian traffic will increase. Businesses which move into the mixed-use districts of the City of Morgantown should be afforded the flexibility they need to flourish and encourage continued development, while providing as much parking as may be possible given the restrictions of the built-environment. The property located at 263 Beechurst Avenue is a small lot of record that currently only has two on-site parking spaces. The applicant purports that he has worked diligently to acquire a contract for off-site parking to no avail. It appears that parking is at a premium in the area and property/business owners, according to the petitioner, do not wish to dedicate (sign or otherwise) their business parking. Redevelopment in this area presents many challenges with regards to required parking due to small lots.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

One of the objectives of the Sunnyside Revitalization Plan was to encourage and promote mixed-use development on primary streets in the Sunnyside Overlay Districts. In order to achieve the goal of providing efficient and attractive land use resources which strengthen the quality, character, and upkeep of the built environment while balancing redevelopment and strategic expansion with open space preservation, a parking variance for the subject site given present site constraints appears prudent. It appears that property along the Beechurst Corridor contains many businesses which do not have the required number of on-site parking spaces.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The Beechurst Corridor benefits from high volumes of pedestrian traffic. The granting of this variance will not be harmful as the built environment will not be altered. The use of the first floor of the 263 Beechurst Avenue mixed-use building has been occupied by a number of commercial uses over

many years without on-site parking relying primarily on walk-up customers. Some of these uses included retail and grocery-related establishments. Mutt's Place, a neighborhood-scaled bar, at its previous 2129 University Avenue location had similarly depended on walk-up customers for 30+ years. There are several adjacent uses that do not provide sufficient parking to meet the strict definition of the code. There has been a significant increase in residential density on the west side of Beechurst Avenue. Market interest remains strong in continuing this redevelopment pattern. It is reasonable to conclude that the relocation of the 30+ year neighborhood-scaled bar from University Avenue to Beechurst Avenue will foster a shift in the establishment's pedestrian customer attraction trends and that the significant increase in residential density on the west side of Beechurst Avenue may very well become the establishment's primary pedestrian customer base. Because 263 Beechurst Avenue and the Mutt's Place establishment at 2129 University Avenue have historically demonstrated a dependence on pedestrian traffic, additional vehicular traffic generated by Mutt's Place locating at 263 Beechurst Avenue is not anticipated.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

There are a number of neighborhood-scaled bars similar to Mutt's Place including the neighboring Lavender Cafe within the City from predominantly single-family residential areas to primary commercial corridors. Mutt's Place has established a 30+ year history and strong patron base in the Sunnyside / Seneca areas with very limited parking. Like Mutt's Place 2129 University Avenue location, which is also a B-2 District in a predominantly student residential area, and other businesses within the Sunnyside / Seneca areas, 263 Beechurst Avenue has been dependent upon on pedestrian walk-up customers.

Papandreas moved to approve V13-21 as requested with Staff recommended conditions; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Mr. Vrooman that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

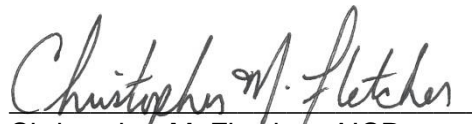
IV. OTHER BUSINESS:

- A.** Public Comments (matters not on the agenda): None.
- B.** Staff Comments: None.

V. ADJOURNMENT: 9:30 PM

MINUTES APPROVED:

BOARD SECRETARY:


Christopher M. Fletcher, AICP